

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00342-ABJ**

CENTER FOR BIOLOGICAL DIVERSITY v. U.S. FISH AND
WILDLIFE SERVICE et al

Assigned to: Judge Amy Berman Jackson

Case: 1:18-cv-01706-ABJ

Cause: 05:552 Freedom of Information Act

Date Filed: 02/13/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

**CENTER FOR BIOLOGICAL
DIVERSITY**

represented by **Margaret E. Townsend**
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DIVERSITY
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LEAD ATTORNEY
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V.

Defendant

U.S. FISH AND WILDLIFE SERVICE

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Defendant

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

represented by **Scott Leeson Sroka**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/13/2018	<u>1</u>	COMPLAINT against U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. FISH AND WILDLIFE SERVICE (Filing fee \$ 400 receipt number 0090-5332024) filed by CENTER FOR BIOLOGICAL DIVERSITY. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons)(Townsend,

		Margaret) (Entered: 02/13/2018)
02/13/2018	<u>2</u>	Corporate Disclosure Statement by CENTER FOR BIOLOGICAL DIVERSITY. (Townsend, Margaret) (Entered: 02/13/2018)
02/13/2018		Case Assigned to Judge Amy Berman Jackson. (zsth) (Entered: 02/14/2018)
02/14/2018	<u>3</u>	SUMMONS(4) Issued Electronically as to U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. FISH AND WILDLIFE SERVICE, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent)(zsth) (Entered: 02/14/2018)
02/15/2018	<u>4</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Stephanie M. Parent, :Firm– Center for Biological Diversity, :Address– P.O. Box 11374; Portland, OR 97211–0374. Phone No. – (971) 717–6404. Fax No. – (503) 283–5528 Filing fee \$ 100, receipt number 0090–5334255. Fee Status: Fee Paid. by CENTER FOR BIOLOGICAL DIVERSITY (Attachments: # <u>1</u> Declaration of Stephanie M. Parent, # <u>2</u> Text of Proposed Order)(Townsend, Margaret) (Entered: 02/15/2018)
02/20/2018		MINUTE ORDER granting <u>4</u> Motion for Leave of Stephanie M. Parent to Appear Pro Hac Vice only upon condition that the lawyer admitted, or at least one member of the lawyer's firm, undergo CM/ECF training, obtain a CM/ECF username and password, and agree to file papers electronically. No court papers will be mailed to any lawyer. Signed by Judge Amy Berman Jackson on 2/20/18. (DMK) (Entered: 02/20/2018)
02/27/2018	<u>5</u>	NOTICE of Appearance by Scott Leeson Sroka on behalf of All Defendants (Sroka, Scott) (Entered: 02/27/2018)
03/02/2018	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 2/17/2018. Answer due for ALL FEDERAL DEFENDANTS by 3/19/2018. (Townsend, Margaret) (Entered: 03/02/2018)
03/02/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. ENVIRONMENTAL PROTECTION AGENCY served on 2/22/2018; U.S. FISH AND WILDLIFE SERVICE served on 2/22/2018 (Townsend, Margaret) (Entered: 03/02/2018)
03/02/2018	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 02/23/2018. (Townsend, Margaret) (Entered: 03/02/2018)
03/19/2018	<u>9</u>	Consent MOTION for Extension of Time to File Answer by U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. FISH AND WILDLIFE SERVICE (Sroka, Scott) (Entered: 03/19/2018)
03/19/2018		MINUTE ORDER granting <u>9</u> Motion for Extension of Time to Answer. Defendants must file their answer to plaintiff's complaint or other response by April 2, 2018. Signed by Judge Amy Berman Jackson on 03/19/2018. (lcabj3) (Entered: 03/19/2018)
03/29/2018	<u>10</u>	ANSWER to <u>1</u> Complaint by U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. FISH AND WILDLIFE SERVICE.(Sroka, Scott) Modified to add link on 3/30/2018 (znmw). (Entered: 03/29/2018)
03/30/2018		MINUTE ORDER. Before the Court in this FOIA case are a complaint and an answer. The requirements of Local Civil Rule 16.3 and Rule 26(f) of the Federal Rules of Civil Procedure appear to be inapplicable. Defendants shall file a dispositive motion or, in the alternative, a report setting forth the schedule for the completion of its production of documents to plaintiff, on or before April 27, 2018.Signed by Judge Amy Berman Jackson on 03/30/2018. (lcabj3) (Entered: 03/30/2018)
04/27/2018	<u>11</u>	STATUS REPORT and Proposed Production Schedule by U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. FISH AND WILDLIFE SERVICE. (Sroka, Scott) (Entered: 04/27/2018)
04/27/2018	<u>12</u>	RESPONSE re <u>11</u> Status Report COUNTERPROPOSAL TO DEFENDANTS PROPOSED PRODUCTION SCHEDULE filed by CENTER FOR BIOLOGICAL DIVERSITY. (Attachments: # <u>1</u> Declaration Stephanie Parent, # <u>2</u> Exhibit A – NOAA FOIA Response Letter, # <u>3</u> Exhibit B – FWS FOIA Response Letter 1, # <u>4</u> Exhibit C – FWS FOIA Response Letter 2, # <u>5</u> Exhibit D – Email to EPA Amending Request, # <u>6</u>

		Exhibit E – –EPA's Acknowledgement of Amended Request, # <u>7</u> Exhibit F – EPA Initial Response Letter)(Townsend, Margaret) (Entered: 04/27/2018)
05/07/2018		MINUTE ORDER. Upon consideration of all of the pleadings, the agencies are ordered to process 600 records per month each, with the first production on May 31, 2018, and continuing on a rolling basis on the last day of each month. The parties must also submit a joint status report on August 1, 2018. Signed by Judge Amy Berman Jackson on 05/07/2018. (lcabj3) (Entered: 05/07/2018)
07/26/2018		MINUTE ORDER. The parties must meet and confer and address in their upcoming August 1 joint status report whether a related case, 18–cv–1706, should be consolidated and whether the records requested in that case should be incorporated into the schedule for rolling production that was established in this case. Signed by Judge Amy Berman Jackson on 07/26/2018. (lcabj3) (Entered: 07/26/2018)
08/01/2018	<u>13</u>	Joint STATUS REPORT by CENTER FOR BIOLOGICAL DIVERSITY. (Townsend, Margaret) (Entered: 08/01/2018)
08/02/2018		MINUTE ORDER. The parties must submit an updated joint status report by October 3, 2018. Signed by Judge Amy Berman Jackson on 08/2/2018. (lcabj3) (Entered: 08/02/2018)
10/03/2018	<u>14</u>	Joint STATUS REPORT by CENTER FOR BIOLOGICAL DIVERSITY. (Townsend, Margaret) (Entered: 10/03/2018)
10/05/2018		MINUTE ORDER. Before the Court can determine whether a briefing schedule should be established at this time, defendant Fish and Wildlife Services ("FWS"), must by October 10, 2018, file a notice with the Court explaining the discrepancy between its statement in a prior status report <u>11</u> that "FWS has completed its searches, which resulted in approximately 5,500 pages of potentially responsive records," and its subsequent statement in a joint status report <u>14</u> that "FWS has processed a total of approximately 5,955 records," and it "estimates it has over 22,500 records remaining to review." As to defendant EPA, absent a narrowing of the FOIA request by agreement or court order, the scope of the search should be defined by the language of the request. Finally, the Court is aware of the pendency of the related case, 18–cv–1706, but it will take no steps to consolidate the cases formally at this time. Signed by Judge Amy Berman Jackson on 10/05/2018. (lcabj3) (Entered: 10/05/2018)
10/10/2018	<u>15</u>	RESPONSE to Order of the Court by U.S. FISH AND WILDLIFE SERVICE re Order,,,,, Set Deadlines,,,, (Sroka, Scott) Modified text on 10/16/2018 (ztd). (Entered: 10/10/2018)
10/17/2018		MINUTE ORDER. Defendant FWS and plaintiff must meet and confer and determine whether they can narrow or prioritize the search or ascertain more quickly how many of the remaining documents are duplicates, and submit a report to the Court by October 24, 2018 with a proposed schedule for completing the production. Defendant EPA must complete the processing of records and submit a status report by November 30, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 10/17/2018. (lcabj3) (Entered: 10/17/2018)
10/24/2018	<u>16</u>	Joint STATUS REPORT by CENTER FOR BIOLOGICAL DIVERSITY. (Parent, Stephanie) (Entered: 10/24/2018)
10/25/2018		MINUTE ORDER. Defendant Fish and Wildlife Services must file an updated joint status report with defendant EPA on November 30, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 10/25/2018. (lcabj3) (Entered: 10/25/2018)
11/30/2018	<u>17</u>	STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. FISH AND WILDLIFE SERVICE. (Sroka, Scott) (Entered: 11/30/2018)
11/30/2018	<u>18</u>	RESPONSE re <u>17</u> Status Report filed by CENTER FOR BIOLOGICAL DIVERSITY. (Parent, Stephanie) (Entered: 11/30/2018)
12/04/2018		MINUTE ORDER. In an October 3, 2018 Joint Status report, plaintiff complained that the EPA was not following the language of the FOIA request which sought "all records from April 1, 2017, through the date of the search," and that instead the agency was using the date the agency received the request as the search cut–off date. Joint Status Report [Dkt. # 14] at 2–3. On October 5, 2018, the Court issued a Minute Order telling

		EPA that "absent a narrowing of the FOIA request by agreement or court order, the scope of the search should be defined by the language of the request." Min. Order (Oct. 5, 2018). Nearly two months later, on November 30, 2018, EPA informed the Court that there still "appears to be some disagreement between the parties about the date of search used as the search's end date." Def.'s Status Report [Dkt. # 17] at 1. Plaintiff complains that "EPA has not complied with the Court's order to define the scope of the search as requested by the Center." Pl.'s Resp. to Def.'s Status Report [Dkt. # 18]. The Court reiterates that absent an agreement or Court order, the scope of a search should be defined by the request. Therefore, the relevant question in connection with this dispute is: what was the date of the search? Even that is hard to pinpoint based on this record. The EPA informed the Court on April 27, 2018, in its first status report and proposed schedule, that on August 11, 2017, EPA sent plaintiff a letter notifying plaintiff that it had conducted what it referred to as its "initial search" to fulfill plaintiff's request, resulting in 7,360 documents, and that it invited plaintiff to reformulate its request. Defs.' Status Report & Proposed Schedule [Dkt # 11] at 2. The EPA also reported that on December 7, 2017, plaintiff submitted an "amended" request which the agency processed along with the original request. Id. And in the report dated April 27, 2018, EPA stated that it had "completed" that combined search. Id. at 6. It did not indicate when that search took place, however. In light of these representations, the Court concludes that the end date of the search should not have been as early as June 27, 2017, the date the EPA received the first request, but that it should be no later than April 27, 2018. Therefore, the parties are ordered to meet and confer and inform the Court by December 10, 2018 whether they can agree upon a single date to be used for this purpose or if it is necessary for the Court to make its own determination. The Court will grant EPA's request for an extension of time to process the documents by December 21, 2018, notwithstanding plaintiff's objection to that extension. SO ORDERED. Signed by Judge Amy Berman Jackson on 12/04/2018. (lcabj3) (Entered: 12/04/2018)
12/10/2018	<u>19</u>	Joint STATUS REPORT by CENTER FOR BIOLOGICAL DIVERSITY. (Parent, Stephanie) (Entered: 12/10/2018)
12/10/2018		MINUTE ORDER. The parties must submit an updated joint status report by December 19, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 12/10/2018. (lcabj3) (Entered: 12/10/2018)
12/19/2018	<u>20</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Sroka, Scott) (Entered: 12/19/2018)
01/04/2019		MINUTE ORDER. In light of <u>20</u> the joint status report, it is ORDERED that EPA shall process 750 records and produce any responsive non-exempt records to plaintiff by January 31, 2019, that EPA shall complete its review and production of the remaining records by March 15, 2019, and that the parties shall file another joint status report by March 22, 2019. If the work contemplated by the schedule is not being carried out due to the lapse in government appropriations, defendants should inform the Court within two business days of the resumption of operations and propose a revised schedule at that time. Signed by Judge Amy Berman Jackson on 1/4/19. (DMK) (Entered: 01/04/2019)
01/06/2019		Set/Reset Deadlines: EPA shall process 750 records and produce any responsive non-exempt records to plaintiff by 1/31/2019, that EPA shall complete its review and production of the remaining records by 3/15/2019, and that the parties shall file another joint status report by 3/22/2019. (jth) (Entered: 01/06/2019)
01/28/2019	<u>21</u>	NOTICE of Restored Government Funding by U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. FISH AND WILDLIFE SERVICE re Order,, (Sroka, Scott) (Entered: 01/28/2019)
01/28/2019		MINUTE ORDER. In light of the government's lapse in appropriations, the Court will revise the agencies' production schedules as follows: EPA must complete processing the 750 records and produce non-exempt records to plaintiff by March 1, 2019; FWS must complete all processing and releases by May 31, 2019. SO ORDERED. Signed by Judge Amy Berman Jackson on 01/28/2019. (lcabj3) (Entered: 01/28/2019)